

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT WINBURN,

Plaintiff,

v.

Case No. 07-CV-14714

MR. VALONE, et al.,

Defendants.

**OPINION AND ORDER DENYING PLAINTIFF'S "PETITION FOR FINDING OF
'GOOD FAITH' BASIS FOR APPEAL"**

Pending before the court is Plaintiff Robert Winburn's "Petition for Finding of 'Good Faith' Basis for Appeal." Plaintiff seeks this court to declare his appeal is taken in good faith for the basis of proceeding *in forma pauperis*. (Pet.'s Mot. at 1.) On October 20, 2008, the court granted Plaintiff's request to proceed without the prepayment of fees, pursuant to 28 U.S.C. § 1915(a). (10/20/08 Order.) The determination of good faith is unnecessary to determining Plaintiff's responsibility to pay required fees. *McGore v. Wigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997) ("In cases brought by prisoners, the certification [as to a good faith basis for appeal] does not affect a prisoner's responsibility to pay the required filing fee. Section 1915(a)(3) is modified by the provisions of § 1915(b)(1) . . . For a prisoner, the question of whether the appeal is taken in good faith is irrelevant as to the assessment of fees and costs.") (*overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007)). The issue of prepayment has been resolved and thus Plaintiff's petition presents a question not properly before the court.

Accordingly, IT IS ORDERED that Plaintiff's "Petition for Finding of 'Good Faith' Basis for Appeal" [Dkt. # 49] is DENIED as moot.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 5, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 5, 2008, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522